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TO: State Association Presidents
State Association Executive Directors

FROM: Sabrina Tines, Senior Director
Center for Governance

Alice O'Brien, General Counsel
Office of General Counsel

DATE: December 3, 2020

RE: Guidance for Virtual Assemblies, NEA Delegate Elections, and NEA Director Elections

The purpose of this memorandum is to provide a policy overview for state affiliate leaders who may continue to face challenges due to the ongoing pandemic, specifically with respect to annual meetings; procedures and timelines for the allocation, election, and reporting of delegates to the 2021 NEA Representative Assembly (NEA RA); and procedures and timelines for the election and reporting of NEA State Directors and Alternate Directors.

As with spring and summer 2020 decisions to hold virtual state and national assemblies, we urge all affiliates to continue to follow recommendations from the CDC and local health and emergency response officials, and take necessary precautions with regard to convening for in-person meetings and elections conducted in-person. We understand that normal procedures and timelines will continue to be impacted in 2021, and we are mindful of the need to be flexible and responsive to changing conditions as we all conduct the essential business of our organizations while minimizing risks to the health of our colleagues and the public.

State Annual Meetings

In determining how to conduct annual meetings, state affiliates should consult their governing documents, including how meeting requirements may be modified and governing documents amended. It is also important to account for NEA's minimum affiliation standards that require any affiliate elections to comply with one-person—one-vote and secret ballot requirements.

Postponement of or changes to the format of a delegate assembly in order to proceed with a virtual meeting may require your state board to operate with the authority to act on critical business. Such authority would be grounded in the board's general duty of care to the organization that requires board members to act in good faith with the care that reasonably prudent people would use.

We know from our critical innovations this past year, virtual meetings and assemblies provide opportunities to move Association business forward. For technical assistance with virtual meeting platforms and capacity, please contact Rose Futchko, NEA Center for Innovation and Technology (rfutchko@nea.org).

Virtual components of the meeting may be combined with mail ballot elections, which could include officer elections, as well as voting on other significant business, such as constitution and bylaw changes. You will find detailed and useful guidance on the [U.S. Department of Labor website](#)¹ as to how to conduct a mail ballot election properly.

NEA Delegate Elections

NEA delegates with full voting rights at the NEA RA, which may include local and state officers who serve as delegates by virtue of office, must be elected in accordance with the attached NEA Requirements for the Allocation and Election of NEA Delegates to the 2021 NEA Representative Assembly (“Requirements”) and the Labor Management Reporting and Disclosure Act (LMRDA), Title IV.

As set forth in the Requirements guidance, there are several means by which state and local delegates can be elected, with the recommended methods being in-person or mail ballot elections. In reviewing these methods for 2021 elections, NEA recommends the following—

1. Review your bylaws. If the bylaws specify that elections are to be held in-person, the best practice is to amend the bylaws immediately to provide for the option of mail ballot elections.
2. If you are able to convert the election to a mail ballot, you will want to alert the membership by whatever means you typically use to communicate with members (e.g., email, website, etc.). The mail ballot itself may serve as the required election notice, so long as it is mailed at least 15 days prior to the ballot return date.
3. If amending the bylaws is not within the board’s authority, because, for example, the bylaws provide that they may only be amended at the state RA or a membership meeting, we recommend convening a virtual meeting in a format that would allow for voting on a bylaw amendment to permit mail ballot elections under certain conditions, to include public health emergencies and natural disasters.

Although it is the practice of many affiliates to elect delegates on an annual basis, annual elections are not required by the LMRDA, nor are they required by NEA, which provides under Bylaw 3-3 that delegates shall be elected to a term not to exceed three years. Thus, unless a state or local association’s bylaws explicitly provide a term of one year for delegates (and that provision of the association’s governing documents cannot be amended in a timely manner), if it is not possible to conduct or complete elections during the ongoing pandemic, NEA recommends that associations consider extending the terms of duly elected delegates who have served for two years or less. State affiliates with local affiliates who seek to exercise this option should request that the local association provide a written certification signed by the local president or their designee that they were not able to conduct their delegate elections due to the pandemic, explain the reasons why, and seek to extend the terms of their current delegates by one year. The state association may adopt a policy of liberally granting such extensions for good cause with such certification from each local association president.

NEA’s Requirements set a deadline of April 10, 2021 for local affiliates to send delegate and successor delegate election report forms to their state affiliates, and a deadline of May 15, 2021 for state affiliates to forward to NEA delegate report forms for all elected local, clustered, state, Retired member, Aspiring Educator member, and successor delegates. Extensions beyond the May 15 deadline for state affiliates to report such delegates will be granted only on request. Additional information on these processes and submission dates is sent to state and local affiliates following delegate allocation on January 15, 2021.

NEA Director Elections

Pursuant to NEA Bylaw 5-1, NEA State Directors must be elected by majority vote in a secret ballot election either by (1) all Active NEA members in the state (“direct election”) or (2) delegates to the state representative body (“State RA”).

¹ <https://www.dol.gov/olms/regs/compliance/elecblm.htm>

1. Direct Election

For affiliates that elect NEA Directors by direct election using statewide ballot and that utilize mail ballot or online voting procedures designed to comply with NEA requirements and federal labor law, we recommend that those affiliates conduct all such elections for the 2021 election cycle. If an affiliate typically conducts some component of such a statewide election via in-person voting, please refer to the previous section on NEA Delegate Elections.

2. State RA

For affiliates that elect NEA Directors in their state annual meeting, the planning should include procedures for electing NEA directors. If you are meeting virtually, at this time, NEA recommends that you conduct the election of NEA directors via mail ballot election rather than by remote electronic voting. That recommendation is based on the fact that NEA State Director positions are LMRDA-covered positions and the Department of Labor has previously expressed significant concerns as to the validity of remote electronic voting systems. As balloting technology has evolved, and particularly in light of the challenges posed by COVID-19, the Department of Labor may issue guidance regarding how online voting may be utilized to comply with the requirements of the LMRDA; in the absence of such guidance, however, mail ballot elections are the preferred option.

Bylaw 5-3 provides for “vacancies arising in the office of state directors held by persons elected within the state” to be filled by the NEA Board upon the recommendation of the state affiliate. Although this provision is typically invoked to fill positions that are vacated by an elected officer who is unable to complete their term, NEA will interpret this Bylaw to permit state affiliates to recommend interim appointments to positions left vacant due to elections that must be postponed due to the pandemic.

Please be aware that an NEA Interim Director appointed under these circumstances may serve only “until the first opportunity” to fill the position through the regular election procedure, NEA Bylaw 5-3, or by another acceptable means that complies with NEA policy, as well as those of your governing documents and the applicable provisions of the LMRDA. Persons who have termed off the Board or who will term off effective August 31, 2021, are not eligible for interim appointment for any duration of service commencing on September 1, 2021. State affiliates may consider following this vacancy appointment practice until such time that normal election procedures may safely resume.

Questions and Additional Assistance

Please contact staff at NEA’s Center for Governance and Office of General Counsel—

Sabrina Tines, Senior Director, Center for Governance, satines@nea.org

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Alice O’Brien, General Counsel, aobrien@nea.org

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Cc:

NEA Executive Committee

State Affiliate General Counsels

Kim Anderson, NEA Executive Director

Rose Futchko, NEA Center for Innovation and Technology

Jim Testerman, NEA Center for Organizing

Zone Directors, NEA Center for Organizing

Attachments:

Requirements for the Allocation and Election of Delegates to the 2021 NEA Representative Assembly

Key Requirements for Electing 2021 NEA Representative Assembly Delegates